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Todd F. Silbergeld
Director
Federal Regulatory

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EX PARTE OR LATE FILED



October 8, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. A. Richard Metzger, Jr.
Acting Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: U.S. Long Distance, Inc. v. Southwestern Bell Telephone Company, File No. E-97-38; ACN Communications v. Pacific Bell, File No. E-97-37; and North County Communications Corp. v. Pacific Bell, File No. E-97-39; and

In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238

Dear Mr. Metzger:

The SBC telephone operating companies (Southwestern Bell Telephone, Pacific Bell, and Nevada Bell) wish to bring to your attention a procedural matter that is unnecessarily causing the Common Carrier Bureau staff, SBC, and other parties to expend valuable, limited resources. In each of three formal complaints filed by competitive local exchange carriers (CLECs) requesting FCC review of state commission determinations or concerning enforcement of state-approved local interconnection agreements, the SBC operating company filed a motion to dismiss for lack of jurisdiction.¹ Unfortunately, in each instance, the Bureau staff has declined to discuss the merits of the motions until the "scope" of the U.S. Court of Appeals for the Eighth Circuit's Interconnection Decision² is determined.³ The staff has further indicated that the motions to dismiss will be addressed in the final order resolving the complaints. The staff has also

¹ ACN Communications v. Pacific Bell, File No. E-97-37, Pacific Bell's Motion to Dismiss (filed August 7, 1997); U.S. Long Distance, Inc. v. Southwestern Bell Telephone Company, File No. E-97-38, Southwestern Bell Telephone Company's Motion to Dismiss (filed August 7, 1997); and North County Communications Corp. v. Pacific Bell, File No. E-97-39, Pacific Bell's Motion to Dismiss (filed August 21, 1997).

² Iowa Util. Bd. v. FCC, No. 96-3321 (8th Cir. July 18, 1997).

³ See Attachment I.

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needlessly established an exhaustive procedural schedule of answers, replies, interrogatories, motions to compel, submissions of fact, and briefs.⁴

The first order of business for any regulatory agency before assuming the responsibility to adjudicate a complaint should be to establish subject matter jurisdiction. It is difficult to understand why the Bureau staff would decline to rule on the Companies' motions to dismiss in favor of completing the unnecessary procedural schedule, especially when the motions seek to answer the very issue that the staff should first establish, that is, jurisdiction. At this juncture, the SBC Companies, the complainants, and the Bureau staff are immersed in a resource consuming effort that should be found to be wholly unnecessary. The U.S. Court of Appeals for the Eighth Circuit has concluded that the FCC does not have jurisdiction to review state commission determinations or to enforce the terms of state-approved interconnection agreements.⁵

SBC will be responsive to any and all formal complaints and will cooperate fully in their resolution. Complaints must, however, in the first instance, be submitted in the proper venue. The Commission's inaction on the Companies' motions to dismiss sends to new entrants the wrong message that complainants may press their case at the FCC, and possibly obtain sensitive information through the discovery process, regardless of whether the FCC is the appropriate agency to hear the complaint. In some (if not most) instances, complainants are petitioning both the state regulatory commission and the FCC concurrently, resulting in duplicative proceedings on the same factual and legal issues. If CLECs are able to file formal complaints either requesting review of state commission determinations or concerning enforcement of state-approved interconnection agreements with both the FCC and the state regulatory body, the FCC will be inundated with improper, duplicative complaints.⁶

⁴ See Attachment II.

⁵ Iowa Util. Bd. v. FCC, No. 96-3321, slip op. at 121 (8th Cir. July 18, 1997) ("The language and design of the [Telecommunications] Act [of 1996] indicate that the FCC's authority under section 208 does not enable the Commission to review state commission determinations or to enforce the terms of interconnection agreements under the Act.").

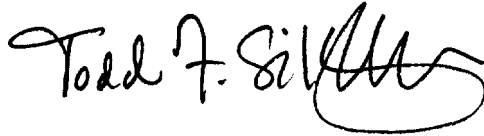
⁶ Indeed, ACN's request for a rehearing of its complaint was denied (for the second time) by the California Public Utilities Commission (CPUC) on September 24, 1997, yet the FCC continues to provide an avenue for ACN and North County Communications to pursue a complaint that the state regulatory agency that has jurisdiction in the matter has already denied as being without merit. See CPUC Order at Attachment III.

Mr. A. Richard Metzger, Jr.
October 8, 1997
Page 3

In summary, the staff's perplexing refusal to rule on the Companies' motions, which address whether the Commission should even hear the complaints, represents a failure by the staff to "put first things first." The parties to the complaints, and the Bureau itself, would be better served by an immediate ruling on the motions. Therefore, SBC respectfully requests that (1) the staff rule immediately on the SBC Companies' motions to dismiss in the three aforementioned formal complaints and (2) the Commission establish formal procedures to rule on all motions concerning jurisdiction and standing on an expedited basis.

In accordance with the Commission's rules governing ex parte presentations, an original and two copies of this document are submitted for the formal complaint procedures rule making docket. In addition, this letter is being served by facsimile and first class mail on the counsel of record in each of the formal complaint proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd F. Silva", with a stylized flourish at the end.

Attachments

cc: Danny E. Adams, Esq., Counsel for U.S. Long Distance, Inc.
John L. Clark, Esq., Counsel for ACN Communications and North
County Communications Corp.
Wendy I. Kirchick, Esq., Counsel for U.S. Long Distance, Inc.

Robert Spangler, Esq.
Kurt Schroeder, Esq.
Debra Sabourin, Esq.
Deena M. Shetler, Esq.

ATTACHMENT I

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

September 16, 1997

Copy by Facsimile; Original by U.S. Mail

Nancy C. Woolf
Pacific Telesis Legal Group
140 New Montgomery Street
San Francisco, CA 94105

John L. Clark
Goodin, MacBride, Squeri, Schlotz & Ritchie, LLP
505 Sansome Street, Ninth Floor
San Francisco, CA 94111

Re: ACN Communications v. Pacific Bell, File No. E-97-37

Dear Counselors:

This letter is to inform the parties in this matter of our decision regarding a request by counsel for Pacific Bell that a status conference be scheduled to discuss the merits of its motion to dismiss, filed on August 7, 1997, to which ACN Communications filed an opposition on September 5, 1997.

The central argument in Pacific Bell's motion to dismiss is that the Commission has no authority to hear the allegations in the complaint, in light of the Eighth Circuit's decision regarding the local competition provisions of the Telecommunications Act of 1996, Pub. L. No. 104-1-4, 110 Stat. 56 (1996) (*Interconnection Decision*).¹ We decline to grant Pacific Bell's request for a status conference to discuss the merits of its motion to dismiss until the scope of the *Interconnection Decision* is determined. The motion will be addressed in the final order resolving the above-captioned proceeding.

¹ *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jul. 18, 1997).

Nancy C. Woolf
John L. Clark
September 16, 1997
Page 2

This action is being taken pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, the authority delegated under Sections 0.91 and 0.291, of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and Section 1.733 of the Commission's rules, 47 C.F.R. § 1.733.

Sincerely,

A handwritten signature in black ink, appearing to read "Deena M. Shetler". The signature is fluid and cursive, with a large initial "D" and a stylized "S".

Deena M. Shetler
Attorney, Formal Complaints
and Investigations Branch
Enforcement Division
Common Carrier Bureau

cc: Christine Jines

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

September 12, 1997

Copies by Facsimile; Originals by U.S. Mail

Danny E. Adams
Wendy I. Kirchick
Kelley Drye & Warren LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036

Marjorie Morris Weisman
Southwestern Bell Telephone Co.
One Bell Center, Room 3522
St. Louis, MO 63101

Christine Jines
Federal Regulatory Relations
SBC Communications, Inc.
1401 I Street, N.W. Suite 1100
Washington, DC 20005

Re: U.S. Long Distance, Inc. v. Southwestern Bell Telephone Company, File No. E-97-38

Dear Counselors:

This letter is to inform the parties in this matter of our decision regarding a request by counsel for Southwestern Bell that a conference be scheduled to discuss the merits of its motion to dismiss, filed on August 7, 1997, to which U.S.L.D. filed an opposition on August 22, 1997.

The central argument in Southwestern Bell's motion to dismiss is that the Commission has no authority to hear the allegations in the complaint, in light of the Eight Circuit's decision regarding the local competition provisions of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (*Interconnection Decision*).¹ We decline at this time to grant Southwestern Bell's request for a conference to discuss the merits of its motion to dismiss until the scope of the *Interconnection Decision* is determined. The motion will be addressed in the final order resolving U.S.L.D.'s formal complaint.

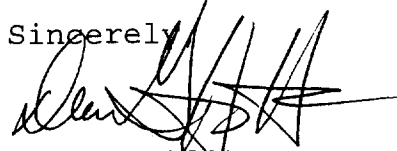
This action is being taken pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, the authority delegated under Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and Section 1.733 of the Commission's rules, 47 C.F.R. § 1.733.

¹ *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jul. 18, 1997).

U.S. Long Distance, Inc.
Southwestern Bell Telephone Co.
September 12, 1997
Page 2

If you have any questions, please call me at (202) 418-7294.
Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Griffin Harmon", with a stylized flourish extending to the right.

Diane Griffin Harmon
Staff Attorney
Formal Complaints and
Investigations Branch
Common Carrier Bureau

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

September 16, 1997

Copy by Facsimile; Original by U.S. Mail

Nancy C. Woolf
Pacific Telesis Legal Group
140 New Montgomery Street
San Francisco, CA 94105

John L. Clark
Goodin, MacBride, Squeri, Schlotz & Ritchie, LLP
505 Sansome Street, Ninth Floor
San Francisco, CA 94111

Re: North Country Communications Corp. v. Pacific Bell, File No. E-97-39

Dear Counselors:

This letter is to inform the parties in this matter of our decision regarding a request by counsel for Pacific Bell that a status conference be scheduled to discuss the merits of its motion to dismiss, filed on August 21, 1997, to which North Country Communications (NCC) filed an opposition on September 5, 1997.

The central argument in Pacific Bell's motion to dismiss is that the Commission has no authority to hear the allegations in the complaint, in light of the Eighth Circuit's decision regarding the local competition provisions of the Telecommunications Act of 1996, Pub. L. No. 104-1-4, 110 Stat. 56 (1996) (*Interconnection Decision*).¹ We decline to grant Pacific Bell's request for a status conference to discuss the merits of its motion to dismiss until the scope of the *Interconnection Decision* is determined. The motion will be addressed in the final order resolving the above-captioned proceeding.

¹ *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jul. 18, 1997).

Nancy C. Woolf
John L. Clark
September 16, 1997
Page 2

This action is being taken pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, the authority delegated under Sections 0.91 and 0.291, of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and Section 1.733 of the Commission's rules, 47 C.F.R. § 1.733.

Sincerely,

A handwritten signature in black ink, appearing to read "Deena M. Shetler". The signature is fluid and cursive, with a large initial "D" and a stylized "S".

Deena M. Shetler
Attorney, Formal Complaints
and Investigations Branch
Enforcement Division
Common Carrier Bureau

cc: Christine Jines

ATTACHMENT II

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

August 13, 1997

Copy by Facsimile; Original by U.S. Mail

Nancy C. Woolf
Pacific Telesis Legal Group
140 New Montgomery Street
San Francisco, CA 94105

John L. Clark
Goodin, MacBride, Squeri, Schlotz & Ritchie, LLP
505 Sansome Street, Ninth Floor
San Francisco, CA 94111

Re: ACN Communications v. Pacific Bell, File No. E-97-37
North Country Communications Corp. v. Pacific Bell, File No. E-97-39

Dear Counselors:

This is to confirm the rulings made in the telephonic status conference conducted in the above-referenced proceedings this afternoon, as follows:

1. The number of interrogatories that parties may serve in each complaint proceeding is limited to twenty.
2. Any request for further interrogatories or other discovery shall be supported by an explanation of both why the information sought is necessary to the resolution of this dispute and why the information sought is not available from any other source.
3. A party responding to interrogatories is directed to serve on the propounding party, and file with the Commission, its answers to such interrogatories within twenty-one calendar days of the date the interrogatories were served.
4. A party opposing a discovery motion shall file and serve such opposition within three calendar days of the date the motion was served.
5. Parties shall effect service by either (1) facsimile transmission in combination with regular mail service, or (2) hand delivery. All documents filed with the Commission shall be sent by either facsimile transmission or hand delivery to the Commission staff attorney assigned to the proceeding on the same day such document is filed with the Commission and served on the opposing party.

Nancy C. Woolf
John L. Clark
August 13, 1997
Page 2

6. Parties are required to file briefs pursuant to Section 1.732(a) of the Commission's rules. The opening briefs shall be no longer than twenty-five pages, excluding exhibits, and the closing briefs shall be no longer than ten pages, excluding exhibits.
7. Parties have agreed to negotiate a confidentiality agreement, to protect proprietary information disclosed in the course of discovery, and file it with the Commission prior to the exchange of discovery responses.

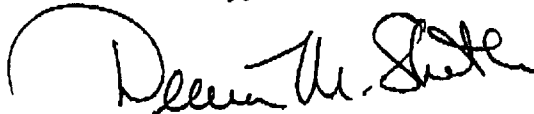
The schedule for the above-captioned proceedings was set as follows:

<u>Date</u>	<u>Action</u>
August 21, 1997	Answer in the matter of North Country Communications Corp. v. Pacific Bell Due
September 5, 1997	Reply and any Opposition to Pacific Bell's Motion to Dismiss in the matter of ACN Communications v. Pacific Bell Due Reply in the matter of North Country Communications Corp. v. Pacific Bell Due If Pacific Bell files a Motion to Dismiss North Country Communications Corp.'s complaint simultaneously with its Answer thereto, any opposition such Motion to Dismiss Due
September 19, 1997	Last day to file interrogatories; Last day to file motions for further interrogatories and/or other discovery
September 23, 1997	Last day to file oppositions to motions for further interrogatories and/or other discovery
October 10, 1997	Last day to serve and file responses to interrogatories
October 14, 1997	Last day to file motions to compel further responses to discovery
October 17, 1997	Last day to file oppositions to motions to compel further responses to discovery
October 22, 1997	Telephonic status conference on discovery at 2:30 pm, Eastern Time.
October 28, 1997	Last day to file discovery responses pursuant to rulings on motions to compel; Last day to file joint stipulations of disputed and undisputed facts, if no further discovery responses are due to be filed on this date
October 31, 1997	Last day to file joint stipulations of disputed and undisputed facts, if further discovery responses were filed on October 20, 1997 Discovery closes
November 14, 1997	Simultaneous Initial briefs due from both parties
November 21, 1997	Simultaneous Closing briefs due from both parties

Nancy C. Woolf
John L. Clark
August 13, 1997
Page 3

These actions are being taken pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 208, and the authority delegated under Sections 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291.

Sincerely,

A handwritten signature in black ink, appearing to read "Deena M. Shetler". The signature is fluid and cursive, with a large initial "D" and a stylized "S".

Deena M. Shetler
Attorney, Formal Complaints
and Investigations Branch
Enforcement Division
Common Carrier Bureau

cc: Debra Sabourin
Kurt Schroeder
Regina DeAngelis
Christine Jines

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

August 14, 1997

Copies by Facsimile; Originals by U.S. Mail

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Marjorie Morris Weisman
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One Bell Center, Room 3522
St. Louis, MO 63101

Christine Jines
Federal Regulatory Relations
SBC Communications, Inc.
1401 L Street, N.W. Suite 1100
Washington, DC 20005

Re: U.S. Long Distance, Inc. v. Southwestern Bell Telephone Company, File No. E-97-38

Dear Counselors:

This letter memorializes the agreements made by the parties during the August 12, 1997 telephone conference, and sets forth the discovery and pleading schedules for this proceeding. First, the parties were directed to send by facsimile to opposing counsel all written submissions on the date of filing, in addition to the service required under Section 1.735(e) of the Commission's rules, 47 C.F.R. § 1.735(e). The parties were directed to also send all written submissions to Commission counsel on the date of filing by facsimile at (202) 418-0236. At the parties' election, written submissions may instead be hand-delivered on the day of filing.

Second, the parties agreed either to negotiate and file a confidentiality agreement to protect proprietary information disclosed in discovery, or to file with the Commission a letter affirming that the nondisclosure agreement contained in the parties' interconnection agreement that is the subject of this formal complaint protects the proprietary information that may be disclosed in discovery.

Third, the schedule for this proceeding was set as follows:

<u>Date</u>	<u>Action</u>
Aug. 22, 1997	Reply due; Opposition to Motion to Dismiss due; Last day to file information regarding confidentiality agreement
Aug. 29, 1997	Last day to file interrogatories
Sep. 19, 1997	Last day to file answers to interrogatories

U.S. Long Distance, Inc.
Southwestern Bell Telephone Co.
August 14, 1997
Page 2

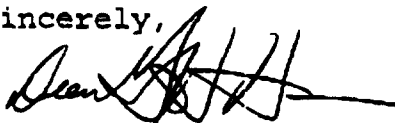
Sep. 26, 1997	Last day to file motions to compel responses to interrogatories
Sep. 30, 1997	Last day to file oppositions to motions to compel responses to interrogatories; last day to file requests for additional discovery
Oct. 3, 1997	Status/settlement conference at the Formal Complaints and Investigations Branch, time TBA
Oct. 10, 1997	Joint stipulations of undisputed and disputed facts due
Oct. 20, 1997	Discovery closes; no requests for additional discovery will be considered after this date
Nov. 3, 1997	Concurrent Initial Briefs due
Nov. 10, 1997	Concurrent Reply Briefs due

Finally, counsel for Southwestern Bell requested that a conference be scheduled to discuss the merits of its motion to dismiss, submitted on August 7, 1997. We tentatively agreed that, if Southwestern Bell's request is granted, a conference to discuss the motion would be scheduled for the week of September 8-12, 1997.

This action is being taken pursuant to Sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, the authority delegated under Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and Section 1.733 of the Commission's rules, 47 C.F.R. § 1.733.

If you have any questions, please call me at (202) 418-7294. Thank you for your cooperation in this matter.

Sincerely,



Diane Griffin Harmon
Staff Attorney
Formal Complaints and
Investigations Branch
Common Carrier Bureau

ATTACHMENT III

Decision 97-09-126

September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application by)	
ACN Communications (U-2528-C))	
For Arbitration Pursuant to Section 252(b))	A.97-03-001
Of the Telecommunications Act of 1996)	(Filed March 3, 1997)
To Establish an Interconnection)	
Agreement With Pacific Bell (U-1001-C).)	
)	

ORDER DENYING REHEARING OF DECISION 97-06-011

ACN Communications ("ACN") has filed an application for rehearing of our Decision (D.) 97-06-011 in the above-captioned arbitration proceeding. Upon review of the application, and all matters raised therein, we hereby deny rehearing. ACN has not established legal error in our decision as is required by Cal. Pub. Util. Code Section 1732.

This proceeding was initiated by ACN which filed a petition for arbitration on March 3, 1997 under Section 252 of the Telecommunications Act of 1996 seeking an interconnection agreement with Pacific Bell. ¹ After a hearing on the matter, the arbitrator issued a report on May 23, 1997. Pacific Bell and ACN then submitted for Commission approval a Conformed Interconnection Agreement pursuant to the arbitrator's report. In D.97-06-111, we approved the agreement. In doing so, we also expressly rejected ACN's contention that it had a right to the terms and conditions of an interconnection agreement entered into by Pacific Bell

with Pac-West Telecomm, Inc. (the "Pac-West agreement"), the latter, like ACN, a "competitive local exchange carrier" (CLC)).² We determined in D.97-06-011 that the Pac-West agreement was not available for replication by ACN under Section 252(i), as ACN claimed, because that agreement was not submitted to the Commission under the 1996 Act and was not approved by the Commission pursuant to the 1996 Act.

ACN now reiterates its argument, stating in the negative, that there is no provision in the 1996 Act allowing an interconnection agreement to become effective outside of the provisions of the Act. ACN states its position as follows:

"There is no authority in the Act or anywhere else for an incumbent local exchange carrier to refuse to file an agreement under Section 252, nor is there any provision that allows a State commission to follow any procedures for approving or rejecting filed interconnection agreements other than those set forth in Section 252. (ACN's Application for Rehearing, at p. 3.)"³

We observe initially that ACN relies here on its own paraphrasing of Section 252. When we look at the terms of the two most pertinent provisions, both Section 251 and 252, we find, quite to the contrary of ACN's claim, that the circumstances by which the Pac-West agreement was independently negotiated and by which it went into effect pursuant to our own rules and procedures set forth

¹ The 1996 ACT amended and repealed various sections of the Communications Act of 1934 at 47 U.S.C. §151 et seq. Unless otherwise indicated, all statutory references shall be to Title 47 of the U.S. Code.

² We refer hereinafter to this agreement as the "Pac-West agreement."

³ Although ACN does not explicitly state the underlying objective of its application, we understand it is to establish a basis for invoking Section 252(i) of the 1996 which it believes allows ACN's agreement with Pacific Bell to replicate the Pac-West agreement.

in D.95-12-056, preclude it from being adopted as a matter of right under Section 252(i).

Specifically, Section 252(a)(1) states:

"Voluntary Negotiations. - Upon receiving a request for interconnection, services, or network elements pursuant to section 251 [of the Act], an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."
Emphasis added.

ACN presents no evidence that Pac-West chose to submit its request to Pacific Bell under Section 251. Instead, the parties filed the Pac-West agreement by Advice Letter No. 18115 in compliance with D.95-12-056.⁴

We also read at Section 252(a)(2):

"Any party negotiating an agreement under this section may, at any point, in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation."

When Pacific Bell and Pac-West submitted their agreement to the Commission pursuant to D.95-12-056, they had completed their negotiation.

⁴ The advice letter, we note, was dated March 19, 1996, only a few weeks after the Telecommunications Act was enacted on February 8, 1996 and several months before even the regulations of the Federal Communications Commission ("FCC") implementing the ACT were promulgated in the FCC's First Report and Order, 11 FCC Rcd 15499, which was released August 8, 1996.

Neither could be described, therefore, as meeting the condition of a party still in process of negotiating an agreement under Section 252.

In addition, Section 252(b) provides that after a prescribed number of days following a local exchange carrier's receipt of a request for negotiation, "the carrier or any party to the negotiation may petition a State commission to arbitrate any open issues." Neither Pacific Bell nor Pac-West sought the involvement of this Commission for mediation or arbitration under Section 252 during the course of their negotiation.

Therefore, when we examine the terms of Section 252, on which ACN relies, we find no foundation for ACN's argument that the Pac-West agreement was approved or must be deemed approved under the 1996 Act. The Pac-West agreement permissibly went into effect under the pre-existing procedures established by D.95-12-056.

Finally, ACN's added version of the factual circumstances surrounding the Pac-West agreement does not establish legal error in our decision. ACN relies on irrelevant and unfounded assertions. ACN claims, for example, that:

"[T]he agreement was not permitted to go into effect and under the procedures set forth in Decision No. 95-12-056 the agreement thereby became a matter for approval or rejection by the Commission not the staff." (ACN's Application for Rehearing, at p. 2.)

We do not see how this description of events, offered without record evidence, would lead us to conclude that the Pac-West agreement was approved, or could be deemed approved by the Commission under Section 252 of the 1996 Act. As ACN states, the matter was subject to D.95-12-056. Indeed, there is no

Commission decision that ACN can cite which approved the Pac-West agreement pursuant to the terms and procedures of the 1996 Act.

With similar reliance on a conclusory assertion, ACN also contends that Pacific Bell and Pac-West "knew the 1996 Act applied" to their agreement when the Advice letter was submitted, and that the Commission and the staff as well "knew the Act applied." (ACN's Application for Rehearing, at p. 3.) ACN again cites no record evidence to support this claim. Furthermore, ACN fails to explain the probative value or relevance of the claim with respect to the fact that the Pac-West agreement was not filed by the parties nor approved by the Commission pursuant to the provisions of the 1996 Act.

Accordingly, we find that ACN has not met its burden of demonstrating legal error in D.97-06-111. ACN has failed to substantiate that we overlooked any material facts and has not proffered any rationale or legal authority that would require granting rehearing. The Commission did not approve the Pac-West agreement pursuant to the 1996 Act, and ACN has not demonstrated that Section 252 requires that all interconnection agreements be approved under the 1996 Act. Consequently, as we concluded in D.97-06-111, ACN does not have a right to the terms and conditions of the Pac-West agreement under Section 252(i).

IT IS THEREFORE ORDERED that the application for rehearing filed by ACN be denied.

This decision is effective today.

Dated September 24, 1997, at San Francisco, California.

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

President P. Gregory Conlon being necessarily absent, did not participate.